

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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TYRONE K.,  
*Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY AND H.N.,  
*Appellees.*

No. 2 CA-JV 2016-0074  
Filed July 20, 2016

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);  
Ariz. R. P. Juv. Ct. 103(G).

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Appeal from the Superior Court in Pinal County  
No. S1100JD201400174  
The Honorable Brenda E. Oldham, Judge

**AFFIRMED**

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COUNSEL

The Stavris Law Firm, PLLC, Scottsdale  
By Alison Stavris  
*Counsel for Appellant*

Mark Brnovich, Arizona Attorney General  
By Laura J. Huff, Assistant Attorney General, Tucson  
*Counsel for Appellee Department of Child Safety*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Judge Howard and Judge Kelly<sup>1</sup> concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 Tyrone K. appeals from the juvenile court's order terminating his parental rights to H., born December 2011, on abandonment grounds pursuant to A.R.S. § 8-533(B)(1).<sup>2</sup> Tyrone argues that insufficient evidence supported the court's finding of abandonment. He additionally asserts the court erred in placing H. with her foster parents rather than her paternal aunt, thereby rendering incorrect its conclusion that termination was in H.'s best interests. We affirm.

¶2 “[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court's decision.” *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009). The Arizona Department of Child Safety (DCS) removed H. from her mother's care in July 2014. Her mother informed DCS that Tyrone was H.'s father, but she had no contact information and DCS was unable to locate him. The juvenile court adjudicated H. dependent as to Tyrone in October 2014. In February 2015, Tyrone contacted DCS, claiming he had just learned he was H.'s father. Although he participated in paternity testing in July 2015, Tyrone otherwise had virtually no contact with DCS as of November 2015. He declined a

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<sup>1</sup>The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

<sup>2</sup>The juvenile court also terminated the parental rights of H.'s mother. She is not a party to this appeal.

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home study to evaluate whether H. could be placed with him and never requested visitation or telephonic contact with H. He has never provided H. support or contacted her.

¶3 In December 2015, pursuant to the juvenile court's order, DCS filed a motion to terminate Tyrone's parental rights on abandonment grounds. After a contested hearing, the court terminated Tyrone's parental rights, concluding Tyrone had abandoned H. and termination of his parental rights was in her best interests. This appeal followed.

¶4 Tyrone argues that the juvenile court erred in finding he had abandoned H. because he attempted to arrange visitation or obtain contact information from DCS on numerous occasions. A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for severance and finds by a preponderance of the evidence that termination is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "[W]e will affirm a termination order that is supported by reasonable evidence." *Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303. That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶5 Pursuant to A.R.S. § 8-531(1),

"Abandonment" means the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months

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constitutes prima facie evidence of abandonment.

A court determines whether abandonment has occurred based on a parent's conduct, not the parent's subjective intent. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 18, 995 P.2d 682, 685 (2000). "What constitutes reasonable support, regular contact, and normal supervision varies from case to case." *Id.* ¶ 20, quoting *In re Pima Cty. Action No. S-114487*, 179 Ariz. 86, 96, 876 P.2d 1121, 1131 (1994). A court may find abandonment when evidence shows the parent "has made only minimal efforts to support and communicate with the child." *Kenneth B. v. Tina B.*, 226 Ariz. 33, ¶ 18, 243 P.3d 636, 640 (App. 2010), quoting § 8-531(1). Reasonable support may be evidenced by "gifts, clothes, cards and food," as well as funds contributed to support the child's upbringing. *Id.* ¶ 20. Additionally, the court should assess "whether the parent has taken steps to establish and strengthen the emotional bonds linking him or her with the child." *Id.* ¶ 21. The burden to take appropriate steps to act rests with the parent, who should assert his or her legal rights at every opportunity. *Michael J.*, 196 Ariz. 246, ¶ 25, 995 P.2d at 687.

¶6 Tyrone's argument essentially asks us to reweigh the evidence, something we do not do. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). The juvenile court is "in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Id.* Tyrone testified he repeatedly sought visitation with H. and was denied. But the case manager's reports and testimony contradicted his claims, and it was for the juvenile court to resolve that conflict in the evidence. Even were we to accept Tyrone's assertion that he first learned he was H.'s father in February 2015, his failure to make any effort to establish a relationship with her in the ten months before DCS filed a motion to terminate his parental rights is more than sufficient to support the court's finding that he abandoned her.

¶7 Tyrone also argues the juvenile court erred in determining termination was in H.'s best interests, seemingly because, in his estimation, the court erred in placing H. with her

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foster parents instead of with his sister. But Tyrone lacks standing to challenge H.'s placement, which is independent from the court's best-interests finding and is determined only after termination of the parent's rights. *Antonio M. v. Ariz. Dep't of Econ. Sec.*, 222 Ariz. 369, ¶ 2, 214 P.3d 1010, 1011-12 (App. 2009). He does not develop any independent argument that termination was not in H.'s best interests. We therefore need not address this argument further.

¶8 We affirm the juvenile court's order terminating Tyrone's parental rights to H.